

Pamela K. Fulmer (SBN 154736)
Chantelle C. Egan (SBN 257938)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
pkfulmer@jonesday.com
cegan@jonesday.com

****E-Filed 5/28/2010****

Brian Selden (SBN 261828)
Michael J. Klepich (SBN 260574)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
bgselden@jonesday.com
mklepich@jonesday.com

Attorneys for Defendant
RECKITT BENCKISER INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SAN FRANCISCO TECHNOLOGY INC.,

Case No. 5:10-cv-00966-JF

Plaintiffs,

v.

THE GLAD PRODUCTS COMPANY,
BAJER DESIGN & MARKETING INC.,
BAYER CORPORATION, BRIGHT IMAGE
CORPORATION, CHURCH & DWIGHT
CO. INC., COLGATE-PALMOLIVE
COMPANY, COMBE INCORPORATED,
THE DIAL CORPORATION, EXERGEN
CORPORATION, GLAXOSMITHKLINE
LLC, HI-TECH PHARMACAL CO. INC.,
JOHNSON PRODUCTS COMPANY INC.,
MAYBELLINE LLC, MCNEIL-PPC INC.,
MEDTECH PRODUCTS INC., PLAYTEX
PRODUCTS INC., RECKITT BENCKISER
INC., ROCHE DIAGNOSTICS
CORPORATION, SOFTSHEEN-CARSON
LLC, SUN PRODUCTS CORPORATION,
SUNSTAR AMERICAS INC.

Defendants.

**STIPULATION STAYING ALL
PROCEEDINGS UNTIL THE
FEDERAL CIRCUIT ISSUES A FINAL
DECISION IN *STAUFFER* AND
SETTING DEADLINE FOR
DEFENDANTS TO MOVE OR PLEAD
TO 30 DAYS THEREAFTER AND
[~~PROPOSED~~] ORDER**

1 Plaintiff San Francisco Technology Inc. ("Plaintiff") and the undersigned defendants, The
 2 Glad Products Company, Bajer Design & Marketing Inc., Colgate-Palmolive Company, Combe
 3 Incorporated, and Reckitt Benckiser Inc. ("Defendants"), through their respective counsel, hereby
 4 make the following stipulation (the "Stipulation").

5 WHEREAS, Plaintiff filed its complaint (D.I. 1) on March 5, 2010 (the "Complaint")
 6 alleging that each of the Defendants has falsely marked articles in violation of 35 U.S.C. § 292;

7 WHEREAS, Plaintiff had earlier filed a substantially similar complaint asserting the same
 8 false marking claim against other defendants in *San Francisco Technology Inc. v. Adobe Systems*
 9 *Incorporated, et al.*, Case No. 2009-06083 ("Adobe"), on December 30, 2009;

10 WHEREAS, on April 13, 2010, after full briefing and argument, Judge Seeborg of the
 11 Northern District of California stayed *Adobe* pending resolution of *Stauffer v. Brooks Bros.*,
 12 Appeal Nos. 2009-1428, 2009-1430, 2009-1453 ("*Stauffer*");

13 WHEREAS, Judge Seeborg held in *Adobe* that the circumstances in which a private party
 14 has standing under Article III of the United States Constitution to bring a *qui tam* action for false
 15 patent marking under 35 U.S.C. § 292(b) is an issue of first impression currently pending before
 16 the United States Court of Appeals for the Federal Circuit in *Stauffer*;

17 WHEREAS, Judge Seeborg held that once the *Stauffer* decision is rendered, the Federal
 18 Circuit's reasoning and analysis will likely bear directly on this Court's consideration of the
 19 pending motions to dismiss for lack of subject matter jurisdiction;

20 WHEREAS, the parties agree that Judge Seeborg's reasoning is equally applicable to this
 21 proceeding and, therefore, stipulate and agree that all claims asserted herein against Defendants,
 22 The Glad Products Company, Colgate-Palmolive Company, Bajer Design & Marketing Inc.,
 23 Combe Incorporated, and Reckitt Benckiser Inc. should be stayed pending a final decision by the
 24 Federal Circuit;

25 WHEREAS, the Stipulation would stay the hearings and all related proceedings on the
 26 Motion to Dismiss (D.I. 76) and Motion to Stay (D.I. 94) filed by Bajer Design & Marketing Inc.
 27 on April 8, 2010;

1 WHEREAS, the Stipulation would stay the hearing and all related proceedings on the
2 Motion to Dismiss (D.I. 83) filed by Colgate-Palmolive Company on April 8, 2010;

3 WHEREAS, of the Defendants, The Glad Products Company and Reckitt Benckiser Inc.
4 have each previously stipulated with Plaintiff to extend time to respond to the Complaint,
5 pursuant to Civil Local Rule 6-1(a), to May 14, 2010 (D.I. 64 and D.I. 56, respectively);

6 WHEREAS, the purpose of the stay is to narrow the litigated issues in this case and the
7 stipulating parties have agreed to further narrow the litigated issues in this case by agreeing not to
8 object to venue and personal jurisdiction in the Northern District of California for this case;

9 WHEREAS, the requested time modification would have no other effect on the schedule
10 for the case because currently no trial date has been set; and

11 WHEREAS, the parties herein have agreed to stay all proceedings until the Federal
12 Circuit issues a final decision in the *Stauffer* decision (or further order of the Court).

13 THE PARTIES HEREBY STIPULATE THAT:

14 These proceedings and all aspects of the case with respect to Defendants, The Glad
15 Products Company, Colgate-Palmolive Company, Bajer Design & Marketing Inc., Combe
16 Incorporated and Reckitt Benckiser Inc., are hereby stayed until 1) the Federal Circuit issues a
17 final decision in *Stauffer v. Brooks Bros.*, Appeal Nos. 2009-1428, 2009-1430, 2009-1453 (i.e., at
18 the expiration of time to file a petition for rehearing or the denial of a timely-filed petition), and 2)
19 further order of the Court in accordance with the Federal Circuit's decision in *Stauffer*;

20 The responsive pleadings of Defendants, The Glad Products Company, Colgate-Palmolive
21 Company, Bajer Design & Marketing Inc., and Reckitt Benckiser Inc., are hereby due 30 days
22 thereafter; and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 The stipulating parties have agreed not to object to venue and personal jurisdiction in the
2 Northern District of California for this case.

3
4 Respectfully submitted,

5 Dated: May 13, 2010

JONES DAY

6
7 By: /s/ Pamela K. Fulmer
8 Pamela K. Fulmer
9 Counsel for Defendant Reckitt
Benckiser Inc.

10 In accordance with General Order No. 45, Section X(B), the above signatory attests that
11 concurrence in the filing of this document has been obtained from the signatories below.

12 Dated: May 13, 2010

MOUNT & STOELKER, P.C.

13
14 By: /s/ Daniel H. Fingerman
15 Daniel H. Fingerman
16 MOUNT & STOELKER, P.C.
17 333 West San Carlos Street,
Suite 1650
18 San Jose CA 95110
Telephone: (408) 279-7000
19 Facsimile: (408) 998-1473
Counsel for Plaintiff San Francisco
Technology Inc.

20 Dated: May 13, 2010

FARELLA BRAUN & MARTEL LLP

21
22 By: /s/ Roderick Manley Thompson
23 Roderick Manley Thompson
24 FARELLA BRAUN & MARTEL LLP
25 235 Montgomery Street, 17th Floor
San Francisco, CA 94104
26 Telephone: (415) 954-4400
Facsimile: (415) 954-4480
27 Counsel for Defendant The Glad
28 Products Company

1 Dated: May 13, 2010

HANSON BRIDGETT LLP

2
3 By: /s/ Stephen B. Peck

4 Stephen B. Peck
5 HANSON BRIDGETT LLP
6 425 Market Street, 26th Floor
7 San Francisco, CA 94105
8 Telephone: (415) 777-3200
9 Facsimile: (415) 551-9366
10 Counsel for Defendant Bajer Design &
11 Marketing Inc.

12
13 Dated: May 13, 2010

KIRKLAND & ELLIS LLP

14
15 By: /s/ David K. Callahan

16 David K. Callahan
17 KIRKLAND & ELLIS LLP
18 300 North LaSalle Street
19 Chicago, IL 60654
20 Telephone: (312) 862-2182
21 Facsimile: (312) 862-2200
22 Counsel for Defendant Colgate-
23 Palmolive Company

24
25 Dated: May 13, 2010

MCMANIS FAULKNER

26
27 By: /s/ Matthew Schechter

28 Matthew Schechter
MCMANIS FAULKNER
50 West San Fernando Street
10th Floor
San Jose, CA 95113
Telephone: (408) 279-8700
Counsel for Defendant Combe
Incorporated

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

2
3 Dated: May 28, 2010

By: 

THE HON. JEFFREY FOGEL
United States District Court Judge